IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 78 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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HIMATSINH @ HASMUKH VAJESINH - Appellant(s)
Versus
STATEE OF GUJARAT & 1 - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1, MRS MEENU KUMAR with MR CHIRAG M PAWAR for Appellant(s) : 1,
PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 7th December, 1998 passed by the learned Addl. Sessions Judge, Court No. 16, Ahmedabad in Sessions Case No. 13 of 1998 whereby, the appellant was convicted for the offences punishable u/s. 302 and 498-A of the Indian Penal Code, 1860 (for short, "the IPC"). For conviction u/s. 302 of IPC, the appellant was sentenced to undergo imprisonment for life with fine of Rs.1000/- and in default of payment of fine, further rigorous imprisonment for a period of one month; while for conviction u/s. 498-A of IPC, he was sentenced to undergo rigorous imprisonment for a period of three years with fine of Rs.500/- and in default of payment of fine, further rigorous imprisonment for a period of 15 days. Both the sentences were ordered to run concurrently. The appellant was also given the benefit of set-off.

2.0 The brief facts of the prosecution case are as under;

2.1 On 07.09.1997, at around 2030 hrs., the appellant returned home in a drunken condition and started quarreling with his wife. In that process, the appellant got enraged and sprinkled kerosene on her from a stove lying in the house and, thereafter, set her ablaze. As a result thereof, the wife of the appellant sustained severe burn injuries and was admitted in Civil Hospital, Ahmedabad.

2.2 At Civil Hospital, Ahmedabad necessary treatment was given to the wife of the appellant. At that time, she narrated the history of the incident before two Medical Officers, who were on duty at the relevant point of time. Since it was a medico-legal case, the police authority of Shahibaug Police Station was telephonically informed about the said incident. On receipt of the said information, an entry to that effect was made by the P.S.O. in the 'Janwajog' Register as well as in the Station Register.

2.3 The P.S.O. in turn gave 'yaadi' to the P.S.I. to make necessary enquiry from Civil Hospital, Ahmedabad with

regard to the said incident. In pursuance of that the P.S.I. went to Civil Hospital, Ahmedabad and after making enquiry from the concerned Medical Officer with regard to the condition of the deceased to depose, the P.S.I. recorded the complaint of the deceased, which was registered as C. R. I – No. 297 of 1997 with Shahibaug Police Station for offences punishable u/s. 307 and 498-A of the IPC.

2.4 As the condition of the deceased had started deteriorating, a 'yaadi' was sent to the concerned Executive Magistrate for the purpose of recording the Dying Declaration of the deceased. On receipt of the same, the concerned Executive Magistrate arrived at the Civil Hospital and recorded the Dying Declaration of the deceased. In the meanwhile, the Investigating Officer carried out 'panchnama' of the scene of offence in the presence of 'panchas' and also seized necessary 'muddamal' articles. Statements of several witness were recorded. On 08.09.1997 the appellant surrendered to the custody. 'Panchnama' to that effect was prepared in the presence of 'panchas'. Since

the appellant had also sustained burn injuries, he was sent to Civil Hospital, Ahmedabad for necessary examination.

2.5 On 14.09.1997 the deceased succumbed to her injuries. Therefore, inquest 'panchnama' was done and the dead body was sent for performing post-mortem. A 'purshis' was sent to the learned Magistrate for the purpose of adding offence u/s. 302 of IPC in the complaint. Thereafter, the 'muddamal' articles as well the clothes seized from the dead body of the deceased were sent to F.S.L. for examination. On receipt of the F.S.L. report, PM note and the medical report, the same were kept in the investigation file.

2.6 At the end of investigation, the Investigating Officer filed charge-sheet against the appellant before the Court of learned Metropolitan Magistrate, Court No. 12, Ahmedabad. As the charges were exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the City Civil & Sessions Court, Ahmedabad and the same was numbered as Sessions Case No. 13 of 1998.

Subsequently, the case was handed over to the learned Addl. Sessions Judge for disposing the same on merits. The learned Addl. Sessions Judge framed the charge and as the appellant pleaded not guilty to the said charge, trial was conducted.

3.0 To prove the guilt against the appellant, the prosecution has examined ten witnesses. PW–1 Ranjitsinh Virsinghbhai Gohil at Exhibit – 10, PW – 2 Kiranpuri Gangapuri at Exhibit – 16, PW – 3 Narendrabhai Bhavanbhai Parmar at Exhibit – 18, PW – 4 Anupsinh Hiraji Thakore at Exhibit – 20, PW – 5 Ishwarbhai Bhagaji Lakhwara at Exhibit – 24, PW – 6 Amratben Prabhatsinh at Exhibit – 25, PW – 7 Ahmadkhan Akbarkhan Pathan at Exhibit – 26, PW – 8 Navinchandra Hiralal Joshi at Exhibit – 30, PW – 9 Rajendraprasad Bhagirathprasad Joshi at Exhibit – 38 and PW – 10 Dr. Tejas Girishbhai Patel at Exhibit – 44.

3.1 The prosecution has also relied upon several documentary evidence and, more particularly, the evidence

in the form of five Dying Declarations viz. the history before two Medical Officers at Exhibit – 21, the complaint at Exhibit – 28, the Dying Declaration recorded by the Executive Magistrate, Ahmedabad at Exhibit – 12 and the history narrated by the deceased before her mother who has deposed as PW – 6 at Exhibit – 25.

3.2 On submission of the closing 'purshis', the learned Addl. Sessions Judge recorded the further statement of the appellant u/s. 313 of the Code of Criminal Procedure, 1973. At that time, the appellant requested the trial Court to issue summons to a witness, who has been examined as DW – 1. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge convicted the appellant and passed sentence as narrated in the earlier part of this judgment.

4.0 Mrs. Meenu Kumar learned Advocate appearing with Mr. Chirag Pawar for the appellant has submitted that the trial Court has not properly appreciated the evidence on

record. She has submitted that the entire case of the prosecution rests upon circumstantial evidence and that in order to prove guilt against the appellant, the prosecution has to establish the entire chain of circumstances pointing towards his guilt. She has submitted that in the case on hand, the prosecution has been unable to establish the same and, therefore, the trial Court has committed serious error in convicting the appellant for the alleged offence in question.

4.1 Learned Advocate has contented that the cause of death of the deceased is 'suicide' and not 'murder' as the deceased was never interested in performing her matrimonial obligations. She has contented that there is not a single eye-witnesses to the alleged incident in question and that the trial Court has merely proceeded on the basis of presumptions without properly appreciating the evidence on record. She has further contented that the prosecution has failed to prove that the alleged injuries found on the body of the appellant were caused while the appellant had allegedly tried to set the deceased ablaze after pouring

kerosene on her.

4.2 Learned Advocate has submitted that except the Dying Declarations in question, there is no other evidence on record to connect the appellant with the crime in question and when the same are not found to be reliable and trustworthy on close scrutiny, it could not be relied upon for recording conviction. She has, therefore, submitted that considering the entire evidence on record, this is a fit case wherein the appellant is required to be acquitted from the alleged offence in question.

5.0 Learned APP appearing on behalf of respondent – State has submitted that the guilt of the appellant is clearly proved from the five dying declarations of the deceased, viz. before the two Medical Officers, the impugned complaint, the Dying Declaration recorded by the Executive Magistrate and the history narrated by the deceased before her mother.

6.0 We have heard learned counsel for the parties and perused the documents on record. It is a matter of record that before the deceased succumbed to her injuries on 14.09.1997, she was examined by not less than two Medical Officers at Civil Hospital, Ahmedabad. Firstly, the deceased was examined by the Medical Officer, who had given the initial treatment, while the deceased was brought to the Emergency Ward of the Civil Hospital, Ahmedabad. The said Medical Officer has been examined as PW – 4 at Exhibit – 20. Subsequently, the deceased was shifted to the Surgery Ward of the Civil Hospital, Ahmedabad, where she was again examined by another Medical Officer, who has been examined as PW – 10 at Exhibit – 44. Before both these Medical Officers, the deceased narrated about the history of the said incident wherein, the role played by the appellant in the commission of the offence was stated in clear terms. In support thereof, the prosecution has produced on record the case-papers of the deceased at Exhibit – 21. Nothing incriminating has come on record from the cross-examinations of these two witnesses which may lead us to

believe their evidence to be untrue or unreliable.

7.0 Apart from the above, the prosecution case also gets ample support from the documentary evidence led in the form of the complaint of the deceased at Exhibit – 28 and the Dying Declaration recorded by the Executive Magistrate at Exhibit – 12. It is also a matter of record that before recording the complaint at Exhibit – 28 and the Dying Declaration at Exhibit – 12, the concerned Investigating Officer / Executive Magistrate had taken necessary care and caution to ensure that the deceased was in a conscious state of mind to depose. It was only after ascertaining the same, the aforesaid evidence were recorded. The prosecution has examined the concerned Investigating Officer as PW – 7 at Exhibit – 26 and the Executive Magistrate as PW – 1 at Exhibit – 10. Nothing incriminating has come out from the cross-examinations of these two witnesses which may lead us to believe their evidence to be unreliable.

8.0 The prosecution case also gets support from the

evidence led by the mother of the deceased before whom also the deceased narrated the history of the entire incident in detail. The said witness has been examined as PW – 6 at Exhibit – 25. In her deposition, PW – 6 has stated that on enquiring from the deceased about the said incident, the deceased informed her that on the date of the incident, the appellant came home in a drunken condition and when the deceased refused to cook a particular item for dinner, the appellant got enraged and poured kerosene on the deceased from a stove and, thereafter, set the deceased ablaze. From the deposition of this witness also, the role played by the appellant in the entire episode is clearly borne out. The said witness has also been cross-examined by the other side. However, nothing incriminating has come out which may lead us to believe the evidence led by this witness to be untrue.

9.0 Thus, the role played by the appellant has been categorically narrated in all the five Dying Declarations, viz. the history before the two Medical Officers at Exhibit – 21, the

complaint at Exhibit – 28, the Dying Declaration recorded by the Executive Magistrate, Ahmedabad at Exhibit – 12 and the history narrated by the deceased before her mother who has deposed as PW – 6 at Exhibit – 25. There are no material contradictions or inconsistencies in the said five Dying Declarations which may warrant corroboration. We find all the five Dying Declarations to be consistent all throughout and, accordingly, hold the same to be wholly reliable, trustworthy and free from all doubts.

10.0 The law on the subject is well settled. In a recent decision of the Hon'ble Apex Court in the case of ***Smt. Shakuntala v/s. State of Haryana*** reported in ***2007(5) Supreme Today 668***, the Apex Court has narrated the principle on which dying declaration can be admitted in evidence. It has been held therein that dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. However, it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. In

the case on hand, we find the Dying Declarations to be wholly trustworthy and free from all doubts and are of the opinion that conviction can be based on it, without any corroboration. Hence, the contention raised by learned Advocate for the appellant that the cause of death of the deceased was 'suicide' and not 'murder' deserves to be rejected, as being completely baseless and devoid of any merits.

11.0 The medical case-papers of the appellant with respect to the treatment given to him at Civil Hospital, Ahmedabad after his arrest are produced at Exhibit – 40. The said documents also support the case of the prosecution. From the said case-papers, it is evident that the appellant sustained burn injuries on both his hands and that they had not completely healed up, meaning thereby that the said injuries were still fresh. Now, even if the evidence led by the Medical Officer, who has given necessary medical treatment to the appellant and who has been examined as PW – 9 at Exhibit – 35, is not found to be of any help to the prosecution

case but, if we consider the evidence at Exhibit – 40 in light of the evidence discussed herein above, viz. in the form of the five Dying Declarations of the deceased, it would clearly lead us to believe that the injuries in question were sustained by the appellant at the time of committing the offence in question. A contrary view in favour of the appellant is not possible in view of the five Dying Declarations of the deceased wherein the role played by the appellant has been specifically narrated. From the aforesaid facts, the presence of the appellant at the time of the incident is also proved beyond doubt. Thus, the contention raised by learned Advocate for the appellant that the said injuries were not sustained by the appellant at the relevant point of time also holds no ground in view of the evidence discussed herein above. The PM Note and the F.S.L. Report also support the case of the prosecution. No other contention/s has/have been raised by learned Advocate for the appellant.

12.0 So far as the aspect of homicidal death is concerned, the same was not disputed before the Court

below and has not been disputed even before this Court. In that view of the matter, we are not discussing the same in detail and, accordingly, have no hesitation in holding that the deceased died a homicidal death.

13.0 In view of the above discussion, we are of the considered opinion that the prosecution has succeeded in proving beyond doubt the guilt against the appellant and the entire chain of circumstances pointing towards his guilt. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal.

14.0 In the result, the appeal is dismissed. Office is directed to send the records & proceedings to the trial Court concerned forthwith.

(R. P. Dholakia, J.) (K. S. Jhaveri, J.)

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